

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

BENJAMIN P. SALVIO, Individually and as :
Administrator of the Estate of
JANINE M. TRAGESSER, Deceased
426 8th Avenue :
Sutersville, PA 15083

v. :

AMGEN, INC., a Delaware corporation CA No.:
One Amgen Center Drive :
Thousand Oaks, CA 91320

Serve: CSC Lawyers Incorporating Service :
10 Universal City Plaza
Universal City, CA 91608

IMMUNEX, INC.
a wholly owned subsidiary of AMGEN, INC.
One Amgen Center Drive :
Thousand Oaks, CA 91320

Serve: CSC Lawyers Incorporating Service :
10 Universal City Plaza
Universal City, CA 91608

WYETH, LLC, a Delaware corporation
5 Giralda Farms :
Madison, NJ 07940-1021

Serve: Corporation Trust Company :
820 Bear Tavern Rd
Ewing, NJ 08628

PFIZER, INC., a Delaware corporation :
235 East 42nd Street
NY, NY 10017

Serve: C T Corporation System :
111 Eighth Avenue
New York, New York, 10011

CIVIL ACTION COMPLAINT

Plaintiff Benjamin P. Salvio, Individually and as Administrator of the estate of his mother Janine M. Tragesser, deceased, residing at 426 8th Avenue, Sutersville, PA 15083, by way of this Complaint against the Defendants, states:

PARTIES

Plaintiff Benjamin P. Salvio (hereinafter "Plaintiff"), is an adult individual residing at 426 8th Avenue, Sutersville, PA 15083.

Plaintiff's mother and decedent, Janine M. Tragesser, died on May 13, 2010 as a result of the factual events that form the basis of this complaint.

Benjamin P. Salvio was appointed Administrator of the estate of his mother Janine M. Tragesser by the Orphans' Court of Westmoreland County, Pennsylvania, on July 26, 2010.

Defendant Amgen, Inc. was and is a Delaware corporation that regularly conducts business in the state of Pennsylvania through its own divisions, branches, subsidiaries and other wholly or substantially owned entities. It is the successor in interest to defendant Immunex, Inc.

Defendant Immunex, Inc. is a corporation wholly owned by Amgen. Immunex does business, and at all relevant times did conduct business, in the state of Pennsylvania either through its parent defendant Amgen, or through its own divisions, branches, subsidiaries and other wholly or substantially owned entities.

Both Amgen and Immunex are biopharmaceutical companies that are engaged in the design, manufacture, production, testing, study, inspection, mixture, labeling, marketing, advertising, sales, promotion, and/or distribution of pharmaceutical products, including Enbrel, throughout the United States, and derives substantial

72 revenue from these activities.

73 Defendant Wyeth, LLC is a Delaware corporation that regularly conducts
74 business in the state of Pennsylvania through its own divisions, branches, subsidiaries
75 and other wholly or substantially owned entities. For the purposes of this litigation,
76 Wyeth represents all of its divisions, branches, subsidiaries and other wholly or
77 substantially owned entities that engage in business and commerce regarding this drug.
78 Wyeth, among other things, is a biopharmaceutical company that is engaged in the
79 design, manufacture, production, testing, study, inspection, mixture, labeling,
80 marketing, advertising, sales, promotion, and/or distribution of pharmaceutical
81 products, including Enbrel, throughout the United States, and derives substantial
82 revenue from these activities.

83 Defendant Pfizer, Inc. was and is a Delaware corporation that regularly conducts
84 business in the state of Pennsylvania through its own divisions, branches, subsidiaries
85 and other wholly or substantially owned entities. It is the successor in interest to Wyeth.
86 For the purposes of this litigation, Pfizer represents all of its divisions, branches,
87 subsidiaries and other wholly or substantially owned entities that engage in business
88 and commerce regarding this drug. Pfizer, among other things, is a biopharmaceutical
89 company that is engaged in the design, manufacture, production, testing, study,
90 inspection, mixture, labeling, marketing, advertising, sales, promotion, and/or
91 distribution of pharmaceutical products, including Enbrel, throughout the United States
92 and internationally, and derives substantial revenue from these activities.

93 At all relevant times, defendants, and each of them, were the agents, servants,
94 joint venturers, partners, parents, subsidiaries, successors, and/or representatives of
95 each other and, in participating in the acts and omissions hereinafter alleged, were

96 acting within the scope and course of their authority as such agents, servants, joint
97 venturers, partners, parents, subsidiaries, successors, and/or representatives, and were
98 acting with the permission and consent of each other. Together, these defendants acted
99 in concert and/or aided or abetted each other and/or conspired to engage in the
100 common course of misconduct alleged herein for the purpose of enriching themselves at
101 the expense of the plaintiffs.

102 JURISDICTION AND VENUE

103 This court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §
104 1332 (diversity of citizenship). The matter in controversy in this civil action exceeds the
105 sum or value of \$75, 000, exclusive of costs and interests, as to each defendant, and is
106 between citizens of different states.

107 Venue is proper in this district under 28 U.S.C. § 1391 because Defendants
108 transact business in this district.

109 FACTUAL ALLEGATIONS

110 Plaintiff's Injuries and Death

111
112
113 Plaintiffs incorporate by reference the previous paragraphs as if fully restated
114 herein.

115 Decedent Janine M. Tragesser suffered from rheumatoid arthritis. Defendants
116 market and sell Enbrel to both doctors and the public to relieve painful and physically
117 challenging symptoms of rheumatoid arthritis. Starting no later than 2005, plaintiff
118 Tragesser asked her doctor to prescribe Enbrel believing that, based on direct-to-
119 consumer media advertising of Enbrel, it would provide safe relief.

120 As a result of years of ingesting this drug, plaintiff's immune system was
121 damaged, resulting in Plaintiff developing a disease called mucormycosis (also

122 sometimes referred to as zygomycosis), a fungal infection of the sinuses, brain, and
123 lungs that occurs mostly in people with weakened immune systems. Mortality rate for
124 this disease is approximately 80% shortly after diagnosis. The infection caused
125 significant respiratory problems for Ms. Tragesser, severely damaging her lungs, making
126 it painful and difficult even to talk, and causing other personal injuries and damages.

127 Plaintiff was forced to have over 20 hospitalizations and costly medical
128 treatments totaling over \$2.5 million just to survive.

129 It was not until May 2008 that the FDA posted its demand that the Defendants
130 revised and strengthen its "black box" warning about infections, including serious
131 infections leading to hospitalization or death that have been observed in patients treated
132 with Enbrel. Plaintiff Tragesser never was told about this serious risk when she began
133 taking Enbrel in 2005. Had she known, given here co-morbidity factors such as
134 diabetes, she would not have risked her life by taking Enbrel, and would have used
135 another treatment regimen that was safer.

136 Decedent Tragesser continued to suffer from severe and debilitating medical
137 problems, and a very poor quality of life caused by ingesting this drug.

138 Believing that the Defendants would take responsibility for marketing and selling
139 a drug to her that made her extremely ill, she entered into a tolling agreement that, with
140 extensions, permitted the Defendants to review her medical records and contentions
141 from February 24, 2010 until March 28, 2011.

142 During this period, on May 13, 2010, plaintiff Tragesser died from complications
143 directly related to taking the drug Enbrel.

144 Unable to convince Defendants to accept responsibility for the death of his
145 mother, decedent Tragesser's only child and heir, Benjamin P. Salvio, brings this legal

146 action for himself and his mother's estate as Administrator.

147 Defendants' Misconduct

148 As a result of their participation in various joint ventures, parent/subsidiary
149 relationships, and or successor corporation relationships, Defendants are jointly and
150 severally liable to Plaintiffs.

151 Enbrel is a biological product (a genetically engineered antibody) that reduces the
152 actions of chemicals in the body that are involved in inflammatory and immune system
153 responses.

154 Enbrel inhibits the action of tumor necrosis factor (TNF), a component of the
155 body's natural defenses against serious infections.

156 On or about November 2, 1998, Defendants began to market, advertise, distribute
157 and sell Enbrel.

158 Upon information and belief, once Enbrel was introduced into the market,
159 Defendants began to receive reports of, among other things, serious infections requiring
160 hospitalizations, infections leading to death, increased tuberculosis, increased rates of
161 cancer, including cancer in teenage patients, and congestive heart failure that Enbrel
162 users were suffering as adverse events related to their Enbrel use.

163 In fact, within 5 months of the licensure of Enbrel, post-marketing reports
164 documented 30 serious infections including 6 deaths. Information provided by the
165 defendants indicate that a large proportion of cases occurred in people with one or more
166 potential risk factors of serious infections, including diabetes, active infections, and a
167 history of chronic recurrent infections.

168 At all times relevant hereto, Defendants knew or should have known that Enbrel
169 causes it users to suffer, among other ailments, serious infections leading to death,

170 congestive heart failure, tuberculosis and increased rates of cancer including lymphoma.

171 Defendants purposely ignored and/or understated the risk of such serious
172 infections, congestive heart failure, tuberculosis and increased rates of cancer due to
173 Enbrel's use in its labels, package inserts, advertisements, marketing and other
174 promotional materials.

175 Although Defendants knew or should have know that dangerous risks were
176 associated with the use of Enbrel, defendants proceeded to and/or permitted Enbrel to
177 be advertised, promoted, distributed and/or sold without adequate warnings of the
178 serious side effects and dangerous risks associated with its use.

179 At all material times, each Defendant was responsible for designing,
180 manufacturing, producing, testing, studying, inspecting, mixing, labeling, marketing,
181 advertising, selling, promoting and/or distributing Enbrel described herein, which
182 Plaintiff Janine Tragesser, now deceased, ingested.

183 Each Defendant, therefore, had an independent obligation to know, analyze and
184 disclose scientific and medical information about Enbrel in a timely and adequate
185 manner, and to provide warnings about risks and side effects as soon as it was aware of
186 them. Each Defendant failed to do so with respect to the Enbrel that Plaintiff ingested,
187 including by failing to know, analyze, and/or disclose an increased risk of fungal
188 infections that can spread throughout the body causing serious injury leading to death
189 as soon as it became aware of such risk.

190 Each Defendant made claims regarding the health benefits of ingesting Enbrel,
191 and the risks and side effects of this drug. Each Defendant knew or should have
192 known that these claims were false, misleading and incomplete. They failed to
193 adequately disclose the true health consequences, and the true risks and side effects

194 from this drug, including the risk of fatal fungal infections that can spread throughout
195 the body, and subsequent death resulting from such infections.

196 Each Defendant knew or should have known that, at all material
197 times, its communications about the benefits, risks, and adverse effects of Enbrel,
198 including communications in labels, advertisements both to doctors and to the public,
199 and promotional materials, were materially false, misleading and incomplete.

200 Plaintiff would not have ingested Enbrel, or would have discontinued its use, or
201 would have used safer alternative treatment methods, had Defendants disclosed the true
202 health consequences, risks and adverse events, including the risk of fatal fungal
203 infections that can spread throughout the body, and subsequent death resulting from
204 such infections, had defendants been truthful regarding its marketing, advertising and
205 sale of Enbrel.

206 Defendants, instead, advertised Enbrel as safe and effective in the treatment of
207 arthritis.

208 Each Defendant's nondisclosures and misrepresentations as alleged herein were
209 material, and were substantial factors that contributed directly and causally, and
210 naturally and necessarily, to the serious injuries and damages that Plaintiff Janine
211 Tragesser has suffered.

212 Defendants' Misconduct Motivated by Profits

213 As noted above, Defendants' warnings to prescribing doctors and consumers
214 about the actual risks of Enbrel were materially false, misleading and incomplete. For
215 example, as noted above, Defendants were forced by the FDA to revise and strengthen
216 its "black box" warning about infections, including among other things, serious
217 infections leading to hospitalization or death that have been observed in patients treated

218 with Enbrel. Before this crucial warning, a prescribing doctor or a customer reviewing
219 media advertising or marketing of Enbrel would not have known that for some
220 customers, ingesting the drug could be fatal, or cause extreme illness requiring extensive
221 hospitalization. This admission and change in promoting, advertising and marketing
222 the drug belatedly came 10 years after Enbrel was first marketed in the U. S., and several
223 years after plaintiff ingested it.

224 Defendants' material nondisclosures and misrepresentations as alleged herein
225 were made because Defendants were and are highly motivated to maintain Enbrel's
226 gross sales and the financial benefit that they receive as a result of Enbrel's highly
227 profitable status as a top 10 "blockbuster" drug in gross revenue.

228 For example, from 2005, when plaintiff Tragesser first began to take Enbrel,
229 through 2008, the year that she contracted the deadly infection murcomycosis,
230 Defendants' gross North American sales in Enbrel alone averaged \$3.475 billion per
231 year. Additional yearly profits in the billions were made in overseas sales of the drug.

232 Defendants, therefore, did not want adverse media attention informing
233 customers that, if they took Enbrel, they could develop serious infections requiring long
234 and expensive hospitalizations, and possibly die. Such information might frighten
235 customers, cause concern among Wall Street investors, and affect negatively the
236 Defendants' bottom line.

237 If Defendants' bottom line were affected, their ability to pay senior executive high
238 salaries also might be affected. For example, according to Forbes 2010 list of highly paid
239 CEOs, Kevin W. Sharer, CEO of defendant Amgen, has received a 5-year compensation
240 total of \$61.81 million dollars.

241 Further, Defendants desire to make as much money as possible over the next few

242 years because they will lose their patent and exclusive right to produce, market and sell
243 Enbrel in 2012, thus permitting other manufacturers to enter the market with lower cost
244 generic options for consumers.

245 Defendants', therefore, made a conscious decision not to disclose the actual risks
246 and adverse reactions of Enbrel to plaintiff Tragesser and to all other consumers. This
247 decision to place "profits over people" led to plaintiff's lengthy illness, poor quality of
248 life, and death.

249 Defendants' Fraudulent Concealment of the Harm

250 Any applicable statutes of limitations have been tolled by the knowing and active
251 concealment and denial of material facts about Enbrel's problems known by Defendants
252 when they had a duty to disclose those facts. They have kept Plaintiffs and other
253 consumers ignorant of vital information essential to their pursuit of these claims,
254 without any fault or lack of diligence on Plaintiffs' part. Their fraudulent concealment
255 did result in such delay. The Defendants are and were under a continuing duty to
256 disclose the true character, quality and nature of the drug that Plaintiff ingested, but
257 instead they concealed them. As a result, Defendants are estopped from relying on any
258 statute of limitations defense.

259 **CLAIMS FOR RELIEF**

260 **First Claim Against All Defendants**
261 **(Negligence)**

262
263 Plaintiff realleges all previous paragraphs.

264 Defendants introduced the drug Enbrel described herein into the stream of
265 commerce. At all material times, Defendants had a duty to Plaintiff and other
266 consumers of their drug to exercise reasonable care in order properly to design,

267 manufacture, produce, test, study, inspect, mix, label, market, advertise, sell, promote
 268 and distribute this product. This includes a duty to warn of side effects, and to warn of
 269 the risks, dangers and adverse events associated with Enbrel.

270 Defendants knew, or in the exercise of reasonable care should have known, that
 271 Enbrel was of such a nature that it were not properly designed, manufactured,
 272 produced, tested, studied, inspected, mixed, labeled, marketed, advertised,
 273 sold, promoted and distributed and it was likely to cause injury to many who ingested
 274 it.

275 Defendants were negligent in the design, manufacture, production, testing, study,
 276 inspection, mixture, labeling, marketing, advertising, sales, promotion and distribution
 277 of Enbrel, and breached their duty to Plaintiff. In particular, Defendants:

- 278 a) Failed to use due care in the preparation of Enbrel to prevent the aforementioned
 279 risks to consumers who ingested the drug;
- 280 b) Failed to use due care in the design of Enbrel to prevent the aforementioned risks
 281 to consumers who ingested the drug;
- 282 c) Failed to conduct adequate pre-clinical testing and research to determine the
 283 safety of Enbrel;
- 284 d) Failed to conduct adequate post-marketing surveillance to determine the safety of
 285 Enbrel;
- 286 e) Failed to accompany their product with proper warnings regarding all possible
 287 adverse side effects associated with the use of their drug and the comparative
 288 severity and duration of such adverse effects;
- 289 f) Failed to use due care in the development of Enbrel to prevent the
 290 aforementioned risks to consumers who ingested the drug;
- 291 g) Failed to use due care in the manufacture of Enbrel to prevent the
 292 aforementioned risks to consumers who ingested the drug;
- 293 h) Failed to use due care in the inspection of Enbrel to prevent the aforementioned
 294 risks to consumers who ingested the drug;
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- i) Failed to use due care in the labeling of Enbrel to prevent the aforementioned risks to consumers who ingested the drug;
- j) Failed to use due care in the marketing of Enbrel to prevent the aforementioned risks to consumers who ingested the drug;
- k) Failed to use due care in the promotion of Enbrel to prevent the aforementioned risks to consumers who ingested the drug ;
- l) Failed to use due care in the selling of Enbrel to prevent the aforementioned risks to consumers who ingested the drug;
- m) Failed to provide adequate information to healthcare providers and consumers for the appropriate use of Enbrel;
- n) Failed adequately to warn about the health consequences, risks and adverse effects caused by Enbrel; and
- o) Were otherwise careless and negligent.

Defendants knew or should have known that Enbrel caused unreasonable harm and dangerous side effects that many consumers would be unable to remedy by any means. Despite this, Defendants continued to promote and market Enbrel for use by consumers, including Plaintiff, when safer alternatives were available. Further, the Defendants promoted, advertised and marketed this drug both to healthcare providers and directly to consumers.

It was foreseeable to Defendants that consumers, including Plaintiff, would suffer injury as a result of Defendants' failure to exercise ordinary care as described herein.

As a direct and proximate result of Defendants' conduct, Plaintiff suffered the injuries and damages specified herein.

**Second Claim Against All Defendants
(Strict Liability: Design Defect)**

Plaintiff realleges all previous paragraphs.

Defendants manufactured, sold and supplied Enbrel described herein, and at all

material times were in the business of doing so. They placed this drug into the stream of commerce. This drug was expected to, and did, reach Plaintiff without substantial change in its condition. Plaintiff ingested this drug.

At the time Enbrel left Defendants' hands, this drug was in a condition not contemplated by Plaintiff, and was unreasonably dangerous to her. Enbrel was dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchased it. It was more dangerous than Plaintiff contemplated. Under such circumstances, the risks of Enbrel outweighed its utility. There were practicable, feasible and safer alternatives to the Defendants' Enbrel.

Defendants' drug is defective and unreasonably dangerous and was a producing cause of the Plaintiff's injuries and damages specified herein. Defendants must be held strictly liable for its design defect.

**Third Claim Against All Defendants
(Strict Liability: Failure to Warn)**

Plaintiff realleges all previous paragraphs.

Defendants manufactured, sold and supplied Enbrel described herein, and at all material times were in the business of doing so. They placed this drug into the stream of commerce. This drug was expected to, and did, reach Plaintiff without substantial change in its condition. Plaintiff ingested this drug.

When Defendants placed Enbrel into the stream of commerce, they failed to accompany it with adequate warnings. They failed to warn of the true risks and dangers, and of the symptoms, scope and severity of the potential side effect of the drug Plaintiff ingested. These risks, dangers and side effects include, but are not limited to serious infections requiring hospitalizations, and death.

Due to the inadequate warnings as alleged herein, at the time Enbrel left Defendants' hands, this drug was in a condition not contemplated by Plaintiff, and was unreasonably dangerous to her. It was dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchased it. It was more dangerous than Plaintiff contemplated. Furthermore, under such circumstances, its risks outweighed its utility.

Defendants' drug described herein is defective and unreasonably dangerous.

Had Defendants provided adequate warnings and instructions, Plaintiff would not have ingested this drug and would not have suffered the personal injuries and would not have died.

Defendants must be held strictly liable for its failure to warn plaintiffs of Enbrel's actual risks and adverse events. Defendants' Enbrel is defective and unreasonably dangerous and was a legal cause, proximate cause and a substantial factor of Plaintiff's injuries and damages specified herein.

**Fourth Claim Against All Defendants
(Breach of Express Warranty)**

Defendants placed Enbrel into the stream of commerce for sale and recommended its use to doctors and consumers without adequately warning doctors, the FDA, and consumers including the decedent, of the risks associated with its use.

Defendants had a duty to exercise reasonable care in selling, promoting, marketing, labeling, testing, designing, manufacturing or distributing Enbrel including a duty to:

- a) Ensure that the product did not cause the user unreasonably dangerous consequences;

389 b) Warn of risks; and

390 c) Disclose adverse material facts when making representations to doctors, the
391 FDA, and the public at-large, including the deceased plaintiff.

392 The decedent and her doctor reasonably relied on the Defendants and their
393 agents to disclose known defects, risks, and dangers of Enbrel.

394 The decedent's doctors, the FDA, and the decedent had no knowledge of the
395 falseness or incompleteness of the Defendants' statements and representations
396 concerning the product at issue. Decedent justifiably and detrimentally relied on the
397 warranties and representations of the Defendants regarding the product at issue.

398 Defendants were under a duty to disclose the defective and unsafe nature of the
399 product at issue to doctors, the FDA, consumers, and users such as the deceased Janine
400 Tragesser. Defendants had sole access to material facts concerning the defects, and
401 Defendants knew that doctors, the FDA, and consumers such as Janine Tragesser, could
402 not have reasonably discovered such defects.

403 By their acts and omissions, Defendants, their agents and employees, expressly
404 warranted to Janine Tragesser and her doctors that the product was merchantable and
405 fit for the purpose intended.

406 This warranty was breached because the product at issue was not safe and
407 effective as Defendants presented, and plaintiff Janine Tragesser was injured and died
408 as a result.

409 As a direct result of Defendants' acts and omissions, as described herein, Janine
410 Tragesser suffered severe personal injuries, pain and suffering, severe emotional
411 distress and harm, and death.

**Fifth Claim Against All Defendants
(Breach of Implied Warranty)**

Plaintiff realleges all previous paragraphs.

At the time Defendants designed, manufactured, produced, tested, studied, inspected, mixed, labeled, marketed, advertised, sold, promoted and distributed their Drug for use by Plaintiff, they knew of the use for which this drug was intended, and impliedly warranted this product to be of merchantable quality and safe and fit for its intended use.

Contrary to such implied warranty, this drug was not of merchantable quality or safe or fit for intended use because it was and is unreasonably dangerous and unfit for the ordinary purposes for which it was and is used, as alleged herein.

As a direct and proximate result of Defendants' conduct, Plaintiff suffered the injuries and damages specified herein.

**Sixth Claim Against All Defendants
(Gross Negligence/Malice Warranting Punitive Damages)**

Plaintiff realleges all previous paragraphs.

The wrongs done by Defendants were aggravated by the kind of malice, fraud and reckless disregard for the rights of others, the public and Plaintiff for which the law allows the imposition of exemplary or punitive damages, in that Defendants' conduct:

- a) Was specifically intended to cause substantial injury to Plaintiff; or
- b) When viewed objectively from Defendants' standpoint at the time of the conduct, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and Defendants were actually, subjectively aware of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others; or
- c) Included a material representation that was false, with Defendants knowing that it was false or with reckless disregard as to its truth and as a positive assertion, with

the intent that the representation be acted on by Plaintiff. Plaintiff relied on the representation and suffered injury as a proximate result of this reliance.

Plaintiff therefore seeks exemplary damages in an amount within the jurisdictional limits of the Court. Plaintiff also alleges that the acts and omissions of named Defendants, whether taken singularly or in combination with others, constitutes gross negligence which proximately caused the injuries to Plaintiff. In that regard, Plaintiff seeks exemplary or punitive damages in an amount that would punish Defendants for their conduct and which would deter other Defendants from engaging in such misconduct in the future.

**Seventh Claim Against All Defendants
(Survival Action)**

Plaintiff realleges all previous paragraphs.

Plaintiff Benjamin P. Salvio has the right to bring the following survival action on behalf of the Estate of the Decedent under the Pennsylvania Survival Statute, 42 Pa.C.S.A. § 8302, and pursuant to 20 Pa.C.S.A. § 3373.

Due to the aforesaid conduct of the Defendants, Janine Tragesser, during her life, was harmed by a serious infection called mucormycosis requiring lengthy and numerous hospitalizations. It ultimately was responsible for her ultimately death.

As a result of the aforesaid conduct of the Defendants, the late Janine Tragesser suffered a substantial increase in the risk of early death and a substantial shortening of her life expectancy.

As a result of the aforesaid conduct of the Defendants, the late Janine Tragesser was not able to perform any activities of daily living and was permanently impaired.

As a result of the aforesaid conduct of the Defendants, the late Janine Tragesser's and her estate incurred substantial medical bills for her treatment, as referenced

hereinbefore.

As a result of the aforesaid conduct of the Defendants which caused the above impairments and increased risk of death, Janine Tragesser had a loss of earnings and earning capacity during her life and her Estate continues to suffer a loss of earnings and earning capacity.

As a direct and proximate result of the negligence of the Defendants, the late Janine Tragesser suffered a permanent diminution of her ability to enjoy life and life's pleasures, and suffered severe pain and emotional distress.

The untimely death of Janine Tragesser on May 13, 2010 was caused by the intentional and negligent conduct of the Defendants.

Plaintiff claims damages for related medical expenses for her treatment prior to her death. She also claims the loss of Decedent's net earnings from the date of death until the respective remainder of her work life and further claims all damages recoverable under the Pennsylvania Survival Statute.

Plaintiff Salvio claims on behalf of the Estate of Janine Tragesser all damages suffered by the Estate by reason of the death of the Decedent, as well as for pain and suffering and fear of impending death the Decedent experienced prior to her death.

In addition, Plaintiff claims all other damages recoverable under the Pennsylvania Survival Statute.

**Eighth Claim Against All Defendants
(Wrongful Death Action)**

Plaintiff realleges all previous paragraphs.

Plaintiff Benjamin P. Salvio has the right to bring the following Wrongful Death Action on behalf of the wrongful death beneficiaries under the Pennsylvania Wrongful

Death Statute, 42 Pa.C.S.A. § 8301, and pursuant to Pa.R.C.P. 2202(a).

Plaintiff Benjamin Salvio is the only person entitled to recover wrongful death damages as a result of the death of the Decedent. At the time of her death, Janine Tragesser had no other children and was not married.

Plaintiff claims damages from Defendants under and by virtue of the Pennsylvania Wrongful Death Statute for the pecuniary value of future services, support, society, comfort, and contribution of the Decedent that would have been rendered to him as sole wrongful death beneficiary for the expected remainder of his life.

Plaintiff further demands payment for funeral and burial expenses.

In addition, Plaintiff demands payment for all economic losses suffered by him as the Decedent's sole statutory survivor including costs of administration and other expenses reasonably associated with the Decedent's death.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seeks judgment in their favor against the Defendants, jointly and severally, as follows:

- a) Economic and non-economic damages in an amount in excess of \$75,000.00 as to each Defendant as provided by law and to be supported by the evidence at trial;
- b) Loss of wages and benefits in the past and loss of future wages and earning capacity in the future;
- c) Reasonable and necessary medical and other health care related expenses;
- d) Physical pain and suffering;
- e) Physical disfigurement;

- f) Physical impairment;
- g) Mental anguish;
- h) Exemplary and punitive damages;
- i) Costs of court;
- j) Attorneys' Fees;
- k) Prejudgement and Post Judgement interest; and
- l) Such other legal equitable relief as this Court deems just and proper.

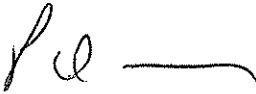
Plaintiffs demand a trial by jury on all claims.

Respectfully submitted,
Benjamin Salvio, Individually and as
Administrator of the Estate of Janine Tragesser

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